

Investigation Report

No. 2629

File No.	ACMA2011/1305
Licensee	Network Ten (Sydney) Pty Ltd
Station	TEN 88
Type of Service	Commercial television broadcasting
Name of Program	Topps Push Pop lollipop advertisement
Date of Broadcast	12 April to 10 July 2011
Relevant Legislation/Code	<ul style="list-style-type: none">• CTS 26(1), 30(1), 31(2)(a) and 32(4) of the <i>Children's Television Standards 2009</i> made under subsection 122(1) of the <i>Broadcasting Services Act 1992</i>.• Clause 7(1)(b) of Schedule 2 to the <i>Broadcasting Services Act 1992</i>.

Findings

The ACMA has reached the finding, for the reasons set out below, that Network Ten (Sydney) Pty Ltd (the licensee) has satisfied CTS 26(1), CTS 30(1), CTS 31(2)(a) and CTS 32(4) of the *Children's Television Standards 2009* (CTS 2009).

As the licensee complied with the CTS 2009, the licensee complied with the licence condition set out at clause 7(1)(b) of Schedule 2 to the *Broadcasting Services Act 1992* (the BSA).

The matter

On 12 July 2011, the ACMA received a complaint regarding the broadcast of a *Topps Push Pop* advertisement (the Advertisement). The Advertisement was alleged to have been broadcast by the licensee during children's (C) periods between 12 April and 10 July 2011. The complainant raised issues of compliance with CTS 26(1), CTS 30(1), CTS 32(4) and CTS 31(2)(a) of the CTS 2009.

The CTS 2009 are program standards determined under section 122(1) of Part 9 of the BSA. Under clause 7(1)(b) of Schedule 2 to the BSA, a licensee must comply with program standards applicable to the licence under Part 9.

The ACMA investigated this matter under section 149 of the BSA. A copy of the relevant provisions of the CTS 2009 and Schedule 2 to the BSA are included in Attachment A to this report.

The Advertisement

In response to the ACMA's investigation, the licensee provided a copy of the Advertisement, which the ACMA describes as follows:

The Advertisement is of fifteen seconds duration.

The Advertisement commences with a close-up shot of the words, "Push Pop Candy", which the camera zooms out to show is labelled on a cartoon Push Pop lollipop product, depicted as a backpack and worn by an animated nondescript cartoon character. The character proceeds to take off the Push Pop lollipop product and removes its lid, revealing the lollipop. The character then licks the lollipop, before replacing the lid and returning it to the character's back.

The character walks along a footpath, encountering four barking dogs. The character pulls the Push Pop lollipop product off its back, removes the lid, and the lollipop pops out, pushing the dogs out of the way.

The character next walks through a green forest setting where a cartoon monster appears and the character performs the same actions as with the dogs, pushing the blue monster out of the way with the product.

The character then walks along a beach, licks the lollipop product, and encounters a lifeguard, standing by a sign that reads "No fun on beach". The lifeguard blows his whistle at the character and talks incomprehensibly. Again, the lifeguard is pushed out of the way by the product.

The Advertisement ends with a depiction of the logo “Push Pop Candy” and three different unanimated Push Pop products are shown, including the Push Pop lollipop product featured in the earlier animated sequence. A voiceover states, “Push Pop. Give life a push”. This final depiction is shown in the final three seconds of the advertisement.

The following stills, taken from the Advertisement, are indicative of key features of the material examined by the ACMA:



Character walking with Push Pop lollipop product



Character licking Push Pop lollipop



Closing screen shot depicting various Push Pop products

Issues

The threshold issue in the ACMA’s investigation is:

- whether the non-program material was broadcast during a C period.

If the Advertisement was broadcast during a C period, the following issues require consideration:

- whether the Advertisement is G classified (CTS 26(1) of the CTS 2009);

- whether the Advertisement misleads or deceives children (CTS 30(1) of the CTS 2009);
- if the size of the Push Pop lollipop product is not clear in the Advertisement, whether it is made clear by reference to something which a child can readily recognise (CTS 32(4) of the CTS 2009); and
- whether the Advertisement states or implies that the Push Pop lollipop product makes children who own or enjoy it superior to their peers (CTS 31(2)(a) of the CTS 2009).

Assessment

This assessment is based on the following material:

- a submission made by the complainant, including alleged broadcast dates and times, on 12 July 2011;
- a submission received from Network Ten Pty Ltd (Network Ten) on 9 August 2011 in response to the complaint;
- an audiovisual recording of the advertisement provided to the ACMA by Network Ten;
- copies of the licensee's broadcast schedule of the Advertisement for April – July 2011; and
- C program schedules submitted by the licensee in accordance with CTS 9 of the CTS 2009.

Reasons

Was the Advertisement broadcast during a C period?

For CTS 26(1), 30(1), 32(4) and 31(2)(a) of the CTS 2009 to apply, the ACMA must determine whether the Advertisement was broadcast during a C period. C periods are those dates/times notified by the licensees to the ACMA in schedules in accordance with CTS 9 of the CTS 2009 (C period schedules). The licensee has provided the relevant C period schedules to the ACMA.

Did the licensee broadcast the Advertisement?

The ACMA compared the 35 instances from 12 April to 10 July 2011 that the complainant alleged the licensee broadcast the Advertisement, with broadcast schedules provided by the licensee. The broadcast schedules are the licensee's record of the dates/times that it broadcast programs and advertisements.

The broadcast schedules indicated that the licensee broadcast the Advertisement on 32 occasions out of the 35 occasions alleged, subject to some slight discrepancies of up to 6 seconds. This very small discrepancy between the times the Advertisement was alleged to have been broadcast and the times which the broadcast schedules indicate

that the Advertisement was broadcast makes no material difference when considering compliance with the relevant provisions of the CTS 2009.

While the complainant alleged that the Advertisement was broadcast on 17 May 2011 at 7.54am and 24 May 2011 at 7.40am, on both occasions during the program *The Elephant Princess*, the licensee's broadcast schedules indicate that the Advertisement was not broadcast at these times. In addition, the licensee's broadcast schedules indicate that the program *Toasted TV* was broadcast at those times and not *The Elephant Princess*. The licensee confirmed that the broadcast schedules provided accurately reflect what it broadcast. The ACMA also notes that published television guides¹ indicate that *Toasted TV*, and not *The Elephant Princess*, was scheduled for broadcast at these times. The ACMA therefore considers, on balance, that the Advertisement was not broadcast on two instances alleged, being 17 May 2011 at 7.54am and 24 May 2011 at 7.40am.

The complainant alleged that the licensee broadcast the Advertisement at 7.21am on 5 June 2011 during the program *The Elephant Princess*, and also at 7.21am on 5 June 2011 during *Totally Wild*. The licensee's broadcast schedules indicate that the Advertisement was broadcast at 7.21am on 5 June 2011 during the program *Totally Wild*, and at 7.55am on 5 June 2011 during *The Elephant Princess*. The ACMA accepts that the Advertisement was broadcast at 7.21am on 5 June 2011 during *Totally Wild*. However, as the repeat entry of 7.21am on 5 June 2011 during *The Elephant Princess* appears to be a typographical error in the complaint, the ACMA considers the Advertisement was not broadcast at this time as alleged. The ACMA prefers the licensee's broadcast schedule as the more accurate record of the Advertisement's broadcast and considers it was also broadcast at 7.55am on 5 June 2011 during *The Elephant Princess*.

In addition to the instances discussed above, the licensee informed the ACMA that it broadcast the Advertisement on the following occasions:

- 9.38am on 16 April 2011 during the program *K9*;
- 7.53am on 17 April 2011 during the program *Elephant Princess*;
- 9.39am and 9.49am on 14 May 2011 during the program *K9*; and
- 9.40am on 11 June 2011 during the program *K9*.

This is supported by the broadcast schedules provided by the licensee.

The ACMA therefore finds that the licensee broadcast the Advertisement on 38 occasions from 12 April to 10 July 2011.

Were these broadcasts of the Advertisement during C periods?

The C period schedules submitted to the ACMA (per CTS 9 of the CTS 2009) indicate that on each of the 38 occasions when the licensee broadcast the Advertisement, it was broadcast during a C period. The ACMA notes that on two of those occasions, being 12 and 13 April 2011, the licensee had displaced C periods to

¹ See *TV Week* magazine May 14-20, 2011 and May 21-27, 2011.

these dates to allow for the live coverage of the US Masters Golf Tournament on 9 and 10 April 2011 (see CTS 11 of the CTS 2009).

The ACMA should also note that it considered whether the Advertisement was broadcast by the licensee during its scheduled C periods on 17 and 24 May 2011. The C period on each of these days was scheduled from 8.00am to 8.30am and the licensee's broadcast schedules indicate that the Advertisement was not broadcast during these times.

CTS 26 (1) – Advertisements broadcast during C periods

CTS 26(1) of the CTS 2009 relevantly states that only G classified advertisements, which also meet CTS 30, 31 and 32 (among other provisions of the CTS 2009), may be broadcast during C periods.

In its letter of 9 August 2011, the licensee advised that it broadcast the Advertisement during C periods from 12 April to 10 July 2011. As discussed above, the ACMA finds that the licensee broadcast the Advertisement on 38 occasions from 12 April to 10 July 2011 during C periods.

The licensee advised that the Advertisement was classified by Commercial Advice Pty Ltd (CAD) as suitable for broadcast during 'C' classification zones (i.e. that the material conformed to the CTS 2009). The ACMA confirmed this using CAD's publicly available database.

Furthermore, for the reasons set out below, the ACMA finds that the Advertisement complied with CTS 30(1), CTS 31(2)(a) and CTS 32(4), and therefore the licensee satisfied the requirements of CTS 26(1) of the CTS 2009.

CTS 30 – Content of advertisements

CTS 30(1) of the CTS 2009 states that no advertisement may mislead or deceive children.

In its submissions, the licensee submitted that the Advertisement is unlikely to mislead children into believing that the lollipop product is the size of a backpack. The licensee stated that '[t]he animated style and improbable events of the [a]dvertisement suggest the depictions are not intended to be taken seriously'.

The licensee noted that while a cartoon character carries the product on its back like a backpack, the Advertisement shows the character consuming the product by licking it. The nature of the product is reinforced in the Advertisement through the use of the words 'Push Pop Candy' on the product and in the end screen shot. The licensee highlighted that the end screen shot contained realistic depictions of various Push Pop products, including the lollipop represented in the Advertisement. This screen shot also depicts the phrase 'available at leading supermarkets', indicating again that the product is a food to be consumed. The licensee submitted that '[c]onfectionary products including lollipops are familiar food products to children and it is unlikely that a child would consider that the lollipop is the size of a backpack, particularly given the depiction in context with the other confectionary products at the end of the [a]dvertisement'.

The ACMA agrees with the licensee's submissions that the Advertisement does not breach CTS 30(1) of the CTS 2009. The ACMA considers that the Advertisement does not mislead or deceive children into thinking that the Push Pop lollipop product is the size of a backpack.

The relevant *Macquarie Dictionary* definition of 'misleading' is:

to lead into error of conduct, thought or judgement.

In determining whether the Advertisement may mislead children, the ACMA must consider how the Advertisement is likely to be interpreted by children. The CTS 2009 defines 'children' as people younger than 14 years of age (see CTS 5 of the CTS 2009). This means that account must be taken of the likely impact of the Advertisement across a range of ages and stages of cognitive development.

The ACMA notes that the animation sequence in the Advertisement mostly portrays the Push Pop lollipop product to be the size of a backpack. However, writing in the closing screenshot indicates that the product is 'candy' and 'available at supermarkets'. In the animation sequence, the cartoon character is shown consuming the Push Pop lollipop by licking it.

In the ACMA's view:

- Children who do not understand that a candy product is being advertised will not be misled into thinking that the Push Pop lollipop product is the size of a backpack.
- Those children who do understand that a candy product is being advertised, will be generally familiar with the candy product category and the size of products therein and therefore are not likely to be misled into thinking that the Push Pop lollipop product is the size of a backpack.

For these reasons, the ACMA finds that the Advertisement does not breach CTS 30(1) of the CTS 2009. The advertisement does not mislead or deceive children.

CTS 32– Clear presentation

CTS 32(4) of the CTS 2009 states that if the size of the product is not clear in an advertisement, it must be made clear by reference to something which a child can readily recognise.

The licensee submitted that the Advertisement did not breach CTS 32(4) of the CTS 2009. In support of this submission, the licensee made similar submissions to those summarised above concerning its compliance with CTS 30(1).

The ACMA has considered how the size of the Push Pop lollipop product is portrayed and whether its size is made clear in the commercial.

The ACMA notes that the animation sequence in the Advertisement mostly portrays the Push Pop lollipop product to be the size of a backpack. However, this portrayal occurs in an animation which is not 'to scale' and in which a series of fanciful events occurs. In the animation sequence, the cartoon character is shown consuming the

Push Pop lollipop by licking it. The product is also used in an imaginative way to fend off a blue monster, amongst other things. The ACMA considers that while the animated sequence does not itself provide a clear presentation of the lollipop's size, the Push Pop product is, nonetheless, realistically depicted in the closing screen shot.

That realistic depiction of the candy product, coupled with children's general familiarity with that product category and the size of products therein, means that the size of the product is made sufficiently clear in the advertisement.

It is, therefore, the ACMA's view that the Advertisement does not breach CTS 32(4) of the CTS 2009.

CTS 31– Pressure in advertisements

CTS 31(2)(a) of the CTS 2009 states that no advertisement may state or imply that a product or service makes children who own or enjoy it superior to their peers. The Advertisement does not state this, and so the issue for the ACMA to consider is whether the Advertisement implies it.

The licensee stated that the Advertisement depicts a cartoon character, interacting with other cartoon characters, in an unrealistic and fanciful manner. At no time during the Advertisement do children appear, nor are they referred to. The licensee submitted that while the Advertisement shows cartoon characters interacting, it does not imply that a child is superior to their peers (other children) due to the ownership or enjoyment of the Push Pop lollipop product.

The licensee also argued that it is not likely that children would consider that the product would confer 'superior powers' by using it to literally push away dogs, monsters, lifeguards, or other creatures. These imaginative depictions are consistent with the tagline, 'Push Pop. Give life a push', and do not imply any notion of superiority but rather enjoyment of the product.

The ACMA agrees with the licensee's submissions that the Advertisement does not breach CTS 31(2)(a) of the CTS 2009. The ACMA considers that the Advertisement does not suggest that owning or enjoying the product makes children superior to their peers.

The ACMA considers that the Advertisement would appeal to children, given the nature of the product, that the Advertisement was broadcast during C periods, and the use of the fanciful cartoon sequence. Accordingly, the ACMA notes that while the cartoon character's age in the Advertisement is not determinable, the cartoon character could be seen by children as a child. In addition, the Advertisement could be seen to suggest that a child that possesses and/or consumes a Push Pop lollipop product is able to overcome scary or intimidating figures, such as the pack of dogs or lifeguard character.

However, the ACMA does not consider that Advertisement implies a connection between children who own or enjoy the product and their peers. The advertisement does not refer to or depict children's peers, either expressly or by implication. The Advertisement simply shows the cartoon character with the Push Pop lollipop product, encountering figures. The Advertisement does not suggest how the

character's encounters with the dogs, monster or lifeguard would have played out if the character did not possess the Push Pop lollipop product. Nor does the Advertisement suggest or describe how a different character would experience these situations if he/she did not possess the Push Pop lollipop product.

It is, therefore, the ACMA's view that the Advertisement does not breach CTS 31(2)(a) of the CTS 2009. The Advertisement does not state or imply that the Push Pop lollipop product makes children who own or enjoy it superior to their peers.

Licence condition at clause 7(1)(b) of Schedule 2 to the BSA

Each commercial television broadcasting licence is subject to the condition that the licensee will comply with program standards applicable to its licence under Part 9 of the BSA (clause 7(1)(b) of Schedule 2 of the BSA). The CTS 2009 are program standards of the kind that are referred to. A failure to comply with the CTS 2009 amounts to a breach of the licence condition at clause 7(1)(b) of Schedule 2 of the BSA.

The ACMA considers that the licensee did not breach the above provisions of the CTS 2009 in respect to the broadcasting of the Advertisement and therefore finds that in this instance the licensee did not breach a condition of its commercial television broadcasting licence.

Attachment A – Relevant provisions of the BSA and CTS 2009

Clause 7(1)(b) of Schedule 2 to the BSA provides:

7 Conditions of commercial television broadcasting licences

- (1) Each commercial television broadcasting licence is subject to the following conditions:
 - ...
 - (b) the licensee will comply with program standards applicable to the licence under Part 9 of this Act;
 - ...

The CTS 2009 states:

CTS 26 Advertisements

- (1) Only G classified advertisements which also meet CTS 25, and CTS 30 to CTS 36 (inclusive), may be broadcast during C periods.
- ...

CTS 30 Content of advertisements

- (1) No advertisement may mislead or deceive children.
- ...

CTS 31 Pressure in advertisements

- (1) ...
- (2) No advertisement may state or imply:
 - (a) that a product or service makes children who own or enjoy it superior to their peers; or
 - (b) ...

CTS 32 Clear presentation

- (1) ...
- ...
- (4) If the size of the product is not clear in an advertisement it must be made clear by reference to something which a child can readily recognise.
- ...